

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Fred Wehling et al. Art Unit: 1618
Patent No.: U.S. 7,815,897
Issue Date: October 19, 2010
Serial No.: 10/743,118 Examiner: Samala
Filed: December 22, 2003 Confirmation No.: 7497
Customer No.: 27791
Title: THERAPEUTIC EFFERVESCENT COMPOSITION

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT
UNDER 37 CFR 1.705(d)

Patentee respectfully requests reconsideration of the patent term adjustment indicated in the above-captioned patent as it relates to the three-year pendency provision of 35 U.S.C. §154(b)(B). This request is being filed pursuant to 37 CFR 1.705(d) and within two months of the date the patent issued.

Pursuant to 37 CFR 1.705(b)(1), Patentee authorizes the Commissioner to charge the fee required under 37. CFR 1.18(e), i.e., \$200, to Deposit Account No. 501,171.

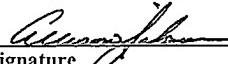
Pursuant to 37 CFR 1.705(b)(2), Patentee provides the following statement of the facts involved:

i) 37 CFR 1.702(2)(i): The correct patent term adjustment should be either 1909 days or 1773 days. The change in the number of days of delay is due to the USPTO's incorrect calculation of the number of days of B delay. The number of days of B delays is either 276 or 140.

a) If the B delay is calculated from the application filing date, then the number of days of B delay is 276, which means that the patent term adjustment should be 1909 days, which is the number of days of A delay (586), minus the number of days of overlap (40), plus the number of days of B delay

CERTIFICATE OF TRANSMISSION

I hereby certify under 37 CFR §1.8(a) that this correspondence is being electronically transmitted to the United States Patent and Trademark Office by EFS-Web, on October 28, 2010.


Signature _____
Allison Johnson
Typed or Printed Name of Person Signing Certificate

(276), plus the number of days of C delay (1121), minus the number of days of Applicants' delay (34) (i.e., $1909 = 586 - 40 + 276 + 1121 - 34$).

- b) If the B delay is calculated from the "application complete date," then the number of days of B delay is 140, which means that the patent term adjustment should be 1773 days (i.e., $1773 = 586 - 40 + 140 + 1121 - 34$).
- ii) 37 CFR 1.702(2)(ii): The dates relevant to the calculation of the number of days of B delay are as follows:
 - a) Filing Date: The application for patent was filed on December 22, 2003.
 - b) Issue Date: The application issued as a patent on October 19, 2010.
 - c) Application Complete Date: The date on which the USPTO indicated the application was complete was May 7, 2004.
 - d) The three year date:
 - 1) The date that was three years from the filing date was December 22, 2006.
 - 2) The date that was three years from the application complete date was May 7, 2007.
 - e) The period of time between the December 22, 2006 three year date and the October 19, 2010 issue date is 1397 days (which is the number of days of delay under 37 CFR 1.703(b) as calculated from the application filing date).
 - f) The period of time between the May 7, 2007 application complete date and the October 19, 2010 issue date is 1261 days (which is the number of days of delay under 37 CFR 1.703(b) as calculated from the date on which the USPTO indicated the application was complete).
 - g) The number of days of C delay is 1121.
 - h) The number of days of B delay based on the filing date is $276 = 1397 - 1121$ (i.e., e-g).
 - i) The number of days of B delay based on the application complete date is $140 = 1261 - 1121$ (i.e., f-g).
 - iii) 37 CFR 1.702(2)(iii): The above-captioned patent is not subject to a terminal disclaimer.

iv) 37 CFR 1.702(2)(iv)(A): Circumstances resulting in a failure to engage in reasonable efforts to conclude processing or examination under 37 CFR 1.704: Patentee was under the impression that they were entitled to file the Notice of Appeal after a Final Office action on either the later of three months from the date of the Final Office action or the date of the Advisory Action, whichever date was later. Patentee filed a Notice of Appeal on April 25, 2007, which was prior to the Advisory Action but after the three month date. As a result, Patentee was assessed a 34 day delay penalty.

In light of the above, the above-captioned patent should be accorded a patent term adjustment of either 1909 days or 1773 days, and Patentee respectfully requests action in accordance therewith.

Please charge any additional fees that may be required or credit any overpayment made to Deposit Account No. 501,171.

Respectfully submitted,

Date: October 28, 2010



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